IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Crl.Rev.Pet.No. 1104 of 2000()

CRA.596/1999 of ADDL.SESSIONS COURT-II, KOZHIKODE
CC.516/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY

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REVN. PETITIONER: APPELLANT/ACCUSED

KUTTYPALAKKAL AZEEZ, THAZHEKKODU
AMSOM AND DESOM OF KOZHIKODE TALUK
(RESIDING WITHIN THE JURISDICTION OF MOKKAM
POLICE STATION, KOZHIKODE DIST.

BY ADV. SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.1104 of 2000

Dated this the 23rd day of October, 2007

O R D E R

The revision petitioner is the accused in C.C.No.516/97 in the court of Judicial First Class Magistrate II, Thamarassery with respect to the offences under Sections 454 and 380 IPC and stands convicted and sentenced to undergo R.I. for one year and to pay a fine of Rs.5,000/- for the offence under Section 454 IPC and also to undergo R.I. for one year for the offence under Section 380 IPC and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for six months.

2. The prosecution case is that the accused on 18.6.1996 at about in between 14.30 and 18.30 hrs. committed theft of a tape recorder worth Rs.2,880/- from the house of the defacto complainant/PW1.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 4, Exts. P1 to P5 and MO1.

4. PW1, the defacto complainant has testified as to the fact that the tape recorder was found to have been stolen when

she returned after watching a cinema at about 6.30 p.m. She saw the door of the house opened and the tape recorder removed. She has proved Ext. P1 FI statement rendered by the police/CW5 on the next day at 8.15 p.m. There she has mentioned that another lady/CW2 told her that it was the accused who took away the tape recorder. She has identified MO1. MO1 was recovered in pursuance of Ext. P4 confession statement of the accused vide Ext. P3 seizure mahazar to which PWs' 2 and 3 are the witnesses. PWs' 2 and 3 did not support the prosecution version and were treated as hostile. PW4, the Sub Inspector of Police has testified as to the arrest of the accused on 22.6.1996 and recovery of MO1 from the house of the accused on 22.6.1996 at 10.30 a.m. I find that the recovery effected as per the confession statement of the accused and as testified by PW4, the Sub Inspector of Police, is admissible under Section 27 of the Evidence Act. MO1 has been identified by PW1. Nothing has been brought out in the cross examination of PW1 to discredit the version as to the recovery. In the circumstances, I find that there is no ground to interfere in the concurrent findings of the court below. The conviction is confirmed.

5. It is submitted that on the date of the incident, accused was only 26 years of age and that he has got wife and two children who are solely depending on the income of the accused for their livelihood and further more than 10 years have elapsed since the commencement of the proceedings. The counsel has pleaded for leniency. It is also pointed out that the accused had already undergone pretrial detention for 70 days.

6. In the circumstances, sentence imposed for the offence under Section 380 IPC is modified to imprisonment already undergone and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for one month. No separate sentence is awarded for the offence under Section 454 IPC.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

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